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U.S. DISTRICT COURT  
DISTRICT OF NEVADA

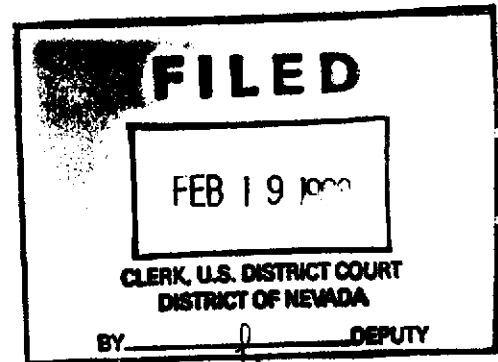
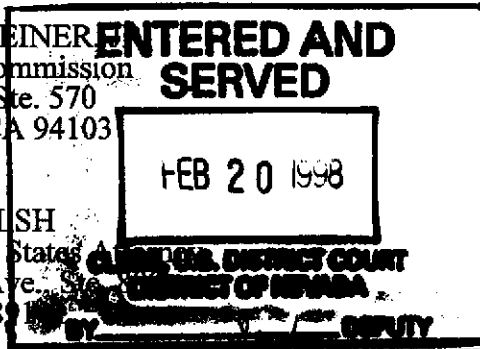
DEPUTY

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11  
12 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

13  
14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 Defendants.

CV-S-97-750-PMP (LRL)

18 [Proposed] FINAL ORDER AGAINST DEFENDANTS JOHN IAVARONE, GLEN  
19 BURKE, IGNACIO JIMENEZ, DAYTON FAMILY PRODUCTIONS, INC., J. J.  
DAYTON ASSOCIATES, INC., HIGH VOLTAGE PICTURES, INC., HIGH VOLTAGE  
20 ENTERTAINMENT, INC., AZTEC ESCROW, INC., REUNION MANAGEMENT, INC.,  
21 AMERICAN FAMILY CONSULTANTS, INC., AMERICAN FAMILY PRODUCTIONS,  
INC., and ICON MANAGEMENT SERVICES, INC.

22 Plaintiff, the Federal Trade Commission ("Commission"), commenced this action by  
23 filing its complaint against defendants Dayton Family Productions, Inc., J. J. Dayton Associates,  
24 Inc., High Voltage Pictures, Inc. aka High Voltage Entertainment, John Rubbico, individually  
25 and doing business as J J Family Film Productions, John Iavarone, Glen Burke, Ignacio Jimenez,  
26 Kevin Roy, and Fred Davidson. The Commission later amended its complaint to name

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1 American Family Productions, Inc., American Family Consultants, Inc., Reunion Management,  
2 Inc., Icon Management Services, Inc., Aztec Escrow, Inc., Raymond Filosi, and Richard S. Hart  
3 as additional defendants. The amended complaint alleges that the defendants engaged in unfair  
4 or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act  
5 ("FTC Act"), 15 U.S.C. § 45, and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and  
6 seeks a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act and  
7 the TSR. The Commission has now moved for summary judgment against individual defendants  
8 Iavarone, Burke, Jimenez, and Roy, and against all of the corporate defendants pursuant to Fed.  
9 R. Civ. P. 56.<sup>1</sup> Having considered the memorandum and exhibits filed in support of this motion,  
10 and all other pleadings and files in this action, and now being fully advised in the premises, the  
11 Court finds:

12 1. This is an action by the Commission instituted under Sections 5 and 13(b) of the  
13 Federal Trade Commission Act, 15 U.S.C. §§ 45 and 53(b), and the TSR, 16 C.F.R. Part 310.  
14 The amended complaint seeks both permanent injunctive relief and consumer redress for alleged  
15 unfair or deceptive acts or practices by the defendants in connection with the promotion of  
16 investments in films.

17 2. The Commission has the authority under Section 13(b) of the FTC Act and the  
18 TSR to seek the relief it has requested.

19 3. This Court has jurisdiction over the subject matter of this case and has jurisdiction  
20 over each of the defendants. Venue in the District of Nevada is proper, and the complaint states  
21 a claim upon which relief may be granted against the defendants under Sections 5 and 13(b) of  
22 the FTC Act and under the TSR.

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23  
24 <sup>1</sup> For purposes of the remainder of this order, the term "defendants" refers to Dayton  
25 Family Productions, Inc., J. J. Dayton Associates, Inc., High Voltage Pictures, Inc., High Voltage  
26 Entertainment, Inc., American Family Productions, Inc., American Family Consultants, Inc.,  
Reunion Management, Inc., Icon Management Services, Inc., Aztec Escrow, Inc., John Iavarone,  
Glen Burke, Ignacio Jimenez, and Kevin Roy.

1           4.     The activities of the defendants are in or affecting commerce, as defined in 15  
2 U.S.C. § 44.

3           5.     Based on the record before this Court, the Court finds that there is no genuine  
4 issue as to any material fact, and the FTC is entitled to judgment as a matter of law, pursuant to  
5 Fed. R. Civ. P. 56.

6           6.     Section 13(b) of the FTC Act authorizes a court to grant a permanent injunction  
7 against violations of any provision of law enforced by the Commission. This Court is persuaded  
8 that the danger of future violations by the defendants justifies the issuance of injunctive relief.  
9 Specifically, it is proper in this case to issue a permanent injunction that: (a) prohibits the  
10 defendants from making, in connection with the advertising, promotion, offering for sale, or sale  
11 of any good or service, certain misrepresentations; (b) bans the corporate defendants and  
12 individual defendants Iavarone, Burke, and Roy from telemarketing; and (c) provides for  
13 monitoring by the Commission of the defendants' compliance with such a permanent injunction.

14          7.     Section 13(b) of the FTC Act authorizes a court to order a defendant who has  
15 violated the FTC Act or the TSR to pay a judgment for equitable monetary relief. The Court  
16 concludes that the defendants violated the FTC Act and the TSR, and that it is therefore proper in  
17 this case to enter a monetary judgment for consumer redress and/or disgorgement against the  
18 defendants (except defendant Roy), jointly and severally. The proper measure of consumer  
19 injury is the amount of money paid by consumers that resulted from the defendants' violations of  
20 Section 5 of the FTC Act and of the TSR. Redress to consumers is warranted because  
21 defendants' misrepresentations are of a type generally relied upon by consumers. It is also  
22 proper to enter a monetary judgement against defendant Roy to require him to disgorge the  
23 unjust enrichment he received through defendants' violations of Section 5 of the FTC Act and of  
24 the TSR.

25          8.     This action and the relief awarded herein are in addition to, and not in lieu of,  
26 other remedies as may be provided by law, including both civil and criminal remedies.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

## DEFINITIONS

For purposes of this Order, the following definitions shall apply:

A. "Telemarketing" shall mean any business activity (whether or not covered by the TSR and including, but not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, to make a charitable contribution, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. *Provided* that the term "telemarketing" shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited.

B. “Assisting others engaged in telemarketing” means knowingly providing any of the following goods or services to any person or entity engaged in telemarketing: (1) performing customer service functions for an entity engaged in telemarketing, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for an entity engaged in telemarketing; (3) providing names of, or assisting in the generation of, potential customers for an entity engaged in telemarketing; or (4) performing marketing services of any kind for an entity engaged in telemarketing.

## PROHIBITED BUSINESS PRACTICES

I. THEREFORE, IT IS HEREBY ORDERED that defendants and their agents, employees, officers, servants and attorneys, and all other persons or entities in active concert or participation

1 with any of them who receive actual notice of this order by personal service or otherwise, in  
2 connection with the advertising, promotion, offer for sale, or sale of any item, product, good,  
3 service, or investment interest of any kind, including but not limited to investments in films, are  
4 hereby restrained and enjoined from:

5 A. Misrepresenting, directly or by implication, the returns, revenues, or profits that  
6 any film has generated for investors;

7 B. Misrepresenting, directly or by implication, the performance (including gross  
8 revenues generated and box office receipts) of any film;

9 C. Misrepresenting, directly or by implication, the awards received by any film or by  
10 any person who has worked on or been associated with a film;

11 D. Misrepresenting the likely profits to be made through any investment involving  
12 films or any other investment;

13 E. Misrepresenting, directly or by implication, the amount of money or other capital  
14 that will be raised for any investment involving films or any other investment;

15 F. Misrepresenting, directly or by implication, the purposes for which funds raised  
16 from consumers will be used;

17 G. Misrepresenting, directly or by implication, the costs associated with the  
18 advertising, promotion, offer for sale, or sale of any item, product, good, service, or investment,  
19 including but not limited to any investment involving films;

20 H. Misrepresenting, in any manner, directly or by implication, the risk, liquidity,  
21 market value, resale value, or expected income or profit associated with any item, product, good,  
22 service, or investment, including but not limited to any investment involving films;

23 I. Misrepresenting, in any manner, directly or by implication, or failing to disclose  
24 any fact material to a consumer's decision to purchase any item, product, good, service, or  
25 investment, including but not limited to any investment involving films; and  
26

1 J. Conducting or participating in any telemarketing solicitation without compliance  
2 with all applicable federal and state registration and bond requirements.

3 **TELEMARKETING BAN**

4 II. IT IS FURTHER ORDERED that defendants Dayton Family Productions, Inc., J. J.  
5 Dayton Associates, Inc., High Voltage Pictures, Inc., High Voltage Entertainment, Inc.,  
6 American Family Productions, Inc., American Family Consultants, Inc., Reunion Management,  
7 Inc., Icon Management Services, Inc., Aztec Escrow, Inc., John Iavarone, Glen Burke, and  
8 Ignacio Jimenez are each permanently restrained and enjoined from either (1) engaging in  
9 telemarketing, or (2) assisting others engaged in telemarketing.

10 **RECORD KEEPING PROVISIONS**

11 III. IT IS FURTHER ORDERED that, for a period of seven years from the date of entry of  
12 this Order, defendants and their agents, employees, officers, attorneys, servants, corporations,  
13 successors, and assigns, and those persons in active concert or participation with them who  
14 receive actual notice of this Order by personal service or otherwise, in connection with any  
15 business where

16 (1) a defendant is the majority owner of the business or directly or indirectly manages  
17 or controls the business, and where

18 (2) the business engages in, or assists others engaged in, telemarketing  
19 are hereby restrained and enjoined from failing to create, and from failing to retain for a period of  
20 three years following the date of such creation, unless otherwise specified:

21 A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect  
22 the cost of goods or services sold, revenues generated, and the disbursement of such revenues.

23 B. Records accurately reflecting: the name, address, and telephone number of each  
24 person employed in any capacity by such business, including as an independent contractor; that  
25 person's job title or position; the date upon which the person commenced work; and the date and  
26 reason for the person's termination, if applicable. The businesses subject to this Paragraph shall

1 retain such records for any terminated employee for a period of two (2) years following the date  
2 of termination.

3 C. Records containing the names, addresses, phone numbers, dollar amounts paid,  
4 quantity of items or services purchased, and description of items or services purchased, for all  
5 consumers to whom such business has sold, invoiced or shipped any goods or services.

6 D. Records that reflect, for every consumer complaint or refund request, whether  
7 received directly or indirectly or through any third party:

8 (1) the consumer's name, address, telephone number and the dollar amount  
9 paid by the consumer;

10 (2) the written complaint or refund request, if any, and the date of the  
11 complaint or refund request;

12 (3) the basis of the complaint, including the name of any salesperson  
13 complained against, and the nature and result of any investigation conducted  
14 concerning any complaint;

15 (4) each response and the date of the response;

16 (5) any final resolution and the date of the resolution; and

17 (6) in the event of a denial of a refund request, the reason for the denial; and

18 E. Copies of all sales scripts, training packets, advertisements, or other marketing  
19 materials utilized.

## 20 MONITORING

21 IV. IT IS FURTHER ORDERED that, in order that compliance with the provisions of this  
22 Order may be monitored:

23 A. Defendants Iavarone, Burke, Jimenez, and Roy each shall notify the Commission  
24 in writing, within ten days of the date of entry of this Order, of his current residential address,  
25 mailing address, business and home telephone numbers, and employment status, including the  
26 names, telephone numbers, and business addresses of any current employers.

1 B. For a period of seven years from the date of entry of this Order, defendants  
2 Iavarone, Burke, Jimenez, and Roy each shall notify the Commission in writing within 30 days  
3 of any changes in his residential or mailing addresses, telephone numbers, or employment status.

4 C. 180 days after the date of entry of this Order, defendants Iavarone, Burke,  
5 Jimenez, and Roy each shall provide a written report to the Commission, sworn to under penalty  
6 of perjury, setting forth in detail the manner and form in which they have complied and are  
7 complying with this Order. This report shall include but not be limited to:

8 (1) Defendant's then current residence address and telephone number;

9 (2) Defendant's then current employment, business addresses and telephone numbers,  
10 a description of the business activities of each such employer, and defendant's title and  
11 responsibilities for each employer; and

12 (3) A copy of each acknowledgment of receipt of this Order obtained by defendant  
13 pursuant to Paragraph IX.

14 D. For the purposes of this Order, all written notifications to the Commission shall be  
15 mailed to:

16 Associate Director for Service Industry Practices  
17 Room H-200  
18 Federal Trade Commission  
Washington, D.C. 20580

18 Re: FTC v. Dayton Family Productions

19 E. For the purposes of Subparagraphs IV.A and IV.B, "employment" includes the  
20 performance of services as an employee, consultant, or independent contractor; and "employers"  
21 include any entity or individual for whom any individual defendant performs services as an  
22 employee, consultant, or independent contractor.

23 V. IT IS FURTHER ORDERED that the Commission is authorized to monitor defendants'  
24 compliance with this Order by all lawful means, including but not limited to the following  
25 means:

26 A. The Commission is authorized, without further leave of court, to obtain discovery



1 from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure,  
2 Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45,  
3 for the purpose of monitoring and investigating any defendant's compliance with any provision  
4 of this Order.

5 B. The Commission is authorized to use investigators posing as consumers and  
6 suppliers to any defendant, his or its employees, or any other entity managed or controlled in  
7 whole or in part by any defendant, without the necessity of identification or prior notice.

8 C. Nothing in this Order shall limit the Commission's lawful use of compulsory  
9 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate  
10 whether any defendant has violated any provision of this Order or Section 5 of the FTC Act, 15  
11 U.S.C. § 45.

12 VI. IT IS FURTHER ORDERED that, for a period of seven years from the date of entry of  
13 this Order, for the purpose of further determining compliance with this Order, each defendant  
14 shall permit representatives of the Commission, within three business days of receipt of written  
15 notice from the Commission:

16 A. Access during normal business hours to any office, or facility storing documents,  
17 of any business where

18 (1) a defendant is the majority owner of the business or directly or indirectly manages  
19 or controls the business, and where

20 (2) the business is engaged in, or assists others engaged in, telemarketing.

21 In providing such access, each defendant shall permit representatives of the Commission to  
22 inspect and copy all documents relevant to any matter contained in this Order; and shall permit  
23 Commission representatives to remove documents relevant to any matter contained in this Order  
24 for a period not to exceed five business days so that the documents may be inspected,  
25 inventoried, and copied.

26 B. To interview the officers, directors, and employees, including all personnel

1 involved in responding to consumer complaints or inquiries, and all sales personnel, whether  
2 designated as employees, consultants, independent contractors or otherwise, of any business to  
3 which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with  
4 the terms of this Order. The person interviewed may have counsel present.

5 *Provided that*, upon application of the Commission and for good cause shown, the Court  
6 may enter an *ex parte* order granting immediate access to defendants' business premises for the  
7 purposes of inspecting and copying all documents relevant to any matter contained in this Order.

#### 8 **MONETARY RELIEF**

9 VII. IT IS FURTHER ORDERED that judgment is hereby entered against each of the  
10 defendants (except defendant Roy), jointly and severally, in the amount of SIX MILLION TWO  
11 HUNDRED THOUSAND DOLLARS (\$6,200,000) for equitable monetary relief, including but  
12 not limited to consumer redress, and for paying any attendant expenses of administering any  
13 redress fund. Judgment is hereby entered defendant Roy in the amount of EIGHT THOUSAND  
14 FOUR HUNDRED DOLLARS (\$8,400) for equitable monetary relief, including but not limited  
15 to consumer redress, and for paying any attendant expenses of administering any redress fund.  
16 The Commission in its sole discretion may use a designated agent to administer consumer  
17 redress. If the Commission, in its sole discretion, determines that redress is wholly or partially  
18 impractical, any funds not so used shall be deposited into the United States Treasury as an  
19 equitable disgorgement remedy. Defendants shall have no right to contest the manner of  
20 distribution chosen by the Commission or its designated agent.

#### 21 **TURNOVER OF FROZEN ASSETS**

22 VIII. IT IS FURTHER ORDERED that, in order partially to satisfy the monetary judgment set  
23 forth above, any financial or brokerage institution, escrow agent, title company, commodity  
24 trading company, business entity, or person that holds, controls or maintains frozen accounts or  
25 assets of the defendants pursuant to the temporary restraining order and preliminary injunction in  
26 this case shall turn over such account or asset to the Commission. The accounts and assets

1 affected by this Paragraph include, but are not limited to:

- 2 - Nevada Federal Credit Union account number 182580234, to which defendant
- 3 Iavarone is a signatory (approximate balance = \$1,811);
- 4 - First Bank of Beverly Hills account number 0150600716, to which defendant
- 5 Burke is a signatory (approximate balance = \$545);
- 6 - California Federal Bank account number 894-402396-2, to which defendant
- 7 Ignacio Jimenez is a signatory (approximate balance = \$375);
- 8 - American Express account number 3783-497460-62004, to which defendant
- 9 Iavarone is a signatory (approximate balance = \$785); and
- 10 - American Bank of Commerce account number 404017796, to which defendant
- 11 Burke is a signatory (approximate balance = \$3,816).

12 **ORDER DISTRIBUTION**

13 IX. IT IS FURTHER ORDERED that, for a period of seven years from the date of entry of  
14 this Order, individual defendants Iavarone, Burke, Jimenez, and Roy each shall:

15 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of  
16 receipt of same from, each officer or director, each individual serving in a management capacity,  
17 all personnel involved in responding to consumer complaints or inquiries, and all sales personnel,  
18 whether designated as employees, consultants, independent contractors or otherwise,  
19 immediately upon employing or retaining any such persons, for any business where

20 (1) that defendant is the majority owner of the business or directly or indirectly manages  
21 or controls the business, and where

22 (2) the business engages in, or assists others engaged in, telemarketing; and

23 B. Maintain for a period of three years after creation, and upon reasonable notice  
24 make available to representatives of the Commission, the original signed and dated  
25 acknowledgments of the receipt of copies of this Order, as required in Subparagraph A of this  
26 Paragraph.


**RETENTION OF JURISDICTION**

X. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

**ENTRY OF THIS JUDGMENT**

XI. IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

**IT IS SO ORDERED.**

  
The Honorable Philip M. Pro  
United States District Judge

Dated: Feb. 17, 1998

CERTIFICATE OF SERVICE

I certify that on February 12, 1998, I served the attached [proposed] **FINAL ORDER AGAINST DEFENDANTS JOHN IAVARONE, ET AL.** by sending copies of the foregoing via first class mail to:

Scott M. Cantor  
Graziadei & Cantor  
302 East Carson Avenue, Suite 400  
Las Vegas, NV 89101

Steven R. Scow  
612 South Seventh Street  
Las Vegas, NV 89101

John V. Spilotro  
624 S. Ninth Street  
Las Vegas, NV 89101

Executed at Washington, D.C., on February 12, 1998.

  
\_\_\_\_\_  
Gregg Shapiro